

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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DERRICK HOWARD,

Plaintiff,

ORDER

v.

09-cv-75-slc

JEFF SUPRENAND, J. KEYS and J. KITZMAN,

Defendants.

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Plaintiff Derrick Howard is proceeding pro se on claims that defendants Jeff Suprenand, J. Keys and J. Kitzman violated his rights under the Eighth Amendment by exhibiting deliberate indifference to a serious risk that plaintiff would harm himself. A trial is scheduled for June 14, 2010. Plaintiff has filed a petition for three writs of habeas corpus ad testificandum for proposed prisoner witnesses who have personal knowledge of events relevant to his case: Michael Love, Kenneth Ingersoll and John Mack. However, plaintiff does not distinguish between the testimony that the prisoners will give; he provides the same summary for all three prisoners. Under Fed. R. Evid. 403, a court may exclude evidence, even when it is relevant, if it is cumulative. This rule has even greater weight in the context of a petition for a writ of habeas corpus ad testificandum, which requires a court to balance the importance of the testimony against the security and administrative burdens imposed by transporting a prisoner to the courthouse. Stone v. Morris, 546 F.2d 730, 735 (7<sup>th</sup> Cir. 1976). Accordingly, plaintiff may have until April 12, 2010 to pick *two* of the prisoner witnesses to testify.

ORDER

It is ORDERED that plaintiff Derrick Howard may have until April 12, 2010 to identify to the court two prisoners to testify about the events relevant to plaintiff's claims.

Entered this 26<sup>th</sup> day of March, 2010.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge